THE HON'BLE SRI JUSTICE P.S. NARAYANA

Writ Petition No.19424 of 2006

ORDER :

Heard Sri K.Chinna Baba, learned counsel representing the writ petitioner and Sri A.Rajashekar Reddy, the learned Assistant Solicitor General of India.

2. The Writ Petition is filed praying for a Writ of Certiorari calling for the records pertaining to the impugned rejection order No.52/CC/56/2005-FF(HC), dated 18-08-2006 of the first respondent, and set aside the impugned rejection order No.52/CC/56/2005-FF(HC), dated 18-08-2006 of the first respondent by holding the impugned action of the first respondent is illegal, arbitrary and discrimination being violation of Articles 14 and 21 of the Constitution of India and declare that the petitioner is entitled for Freedom Fighters Pension with all consequential arrears with effect from the date on which the committee/member have recommended her application and pass such other orders.

3. It is stated that the petitioner is a genuine Freedom Fighter and therefore submitted an application for grant of Freedom Fighters Pension in the year 1997 in prescribed proforma with Border Camp In-charge Certificate, stating the activities in which she participated in Hyderabad Liberation Movement for the merger of Hyderabad State into Indian union during 1947-48. It is further stated that insofar as Border Camp cases are concerned, there would be no documentary evidence except Board Camp In-charge Certificate. Therefore, to scrutinize the claims of Border Camp claimants, the ministry of Home Affairs had

been pleased to constitute a Screening Committee to recommend the applications for grant of Freedom Fighters Pension. Therefore, the first respondent had placed her application before the Screening Committee and the Committee had been pleased to recommend her case for grant of Freedom Fighters Pension vide Agenda No.7436 with File No.112/768/98. Then her case had been forwarded to the State Government along with other cases for submission of verification report.

4. Further it is stated that petitioner attended the enquiry before the fourth respondent and submitted all required documents and thereupon the third respondent had been pleased to submit her verification and entitlement report to the second respondent recommending her case for sanction of Freedom Fighters Pension. In turn, the State Government had forwarded her enquiry report to the first respondent recommending her case for sanction of Freedom Fighters Pension vide letter No.1771/REV/FF-I/2005(162)-1, dated 07-03-2005. But the first respondent had not considered her case. At that juncture, she filed W.P.No.26390 of 2005, which had been disposed of on 12-12-2005 directing the first respondent to consider her case as per the second respondent's verification report. After filing Contempt Case No.721 of 2006, the first respondent had passed the impugned rejection order on technical grounds, though the State Government had recommended petitioner's claim for grant of Freedom Fighters Pension.

5. Further it is stated that in the impugned proceedings at para-6 (i), it is stated that the Screening

Committee recommendation does not ipso facto imply recommendation and the committee recommendation slip is not available on records. If it is so, the original file of petitioner's case has to be placed before this Court to verify whether her case is recommended or rejected by the Screening Committee, otherwise the very object in constituting the Screening Committee would be defeated. If really petitioner's case has not been recommended, the question of forwarding her case along with other recommended cases to the State Government for submission of verification and entitlement report does not arise. Therefore, the averment made in the impugned proceedings in para 6(i) by the first respondent is unsustainable in the eye of law and that vitiates the impugned proceedings and thereby liable to be set-aside. Petitioner cannot be penalized for misplacement or non-availability of neither her file or the committee recommended slip. The petitioner submitted all required documents what had to be submitted before the Enquiry Authority on par with recommended cases and therefore the first respondent is bound to sanction the Freedom Fighters Pension to her with all consequential arrears, otherwise the action would amounts to illegal, arbitrary and discrimination being violation of Articles 14 and 21 of the Constitution of India.

6. It is also stated that petitioner's case had also been recommended by the former member of the Screening

Committee since its inception and veteran leader of the Hyderabad Liberation Movement late Sri Kodati Narayana Rao had also forwarded her application in his letter dated 11-08-1988, with his personal knowledge stating that petitioner is a genuine Freedom Fighter, by taking into consideration of the Resolution passed by the Screening Committee at the time of Dissolution dated 19-12-1997 and a circular of the first respondent dated 24-12-1997. Therefore, even assuming for argument sake, that petitioner's case had not been recommended by the Screening Committee, the first respondent is bound to sanction Freedom Fighters Pension as per the recommendation made by the former member of the Committee late Sri Kodati Narayana Rao, otherwise the very object in framing Liberalized Samman Scheme, 1980 would be defeated. The Apex Court had also been held that without going to hyper technical objections, to safeguard the object of the scheme, the Freedom Fighters Pension has to be sanctioned to the Freedom Fighters. Therefore, the impugned order is liable to be set aside by holding that petitioner is entitled for grant of Freedom Fighters Pension with all consequential arrears with effect from the date of the recommendation of her case made by the Committee/Member for grant of Freedom Fighters Pension.

7. Further it is averred that her application had been recommended by the Screening Committee in Agenda No.7436 with File No.112/768/98, but the first respondent has passed the impugned proceedings with File No.52/CC/56/2005-FF(HC), dated 18-08-2006. Therefore, the first respondent is bound to place two related files before this Hon'ble Court to verify whether petitioner's

case is recommended or rejected by the Screening Committee, otherwise she would suffer irreparable loss. In such circumstances, writ petitioner approached this Court praying for an appropriate relief.

8. This Court issued Rule Nisi on 20-09-2006.

9. The Counter-affidavit is filed by the first respondent. The back ground of the case had been stated as hereunder:

> "It is submitted that all persons who took part in freedom movement in someway or the other are not eligible for Samman pension under the "Swatantrata Sainik Samman Pension Scheme, 1980" (Scheme). Only specified category of freedom fighters are eligible for Samman Pension who fulfill the conditions of the Scheme by furnishing the proof of claimed sufferings **of the nature and in the manner specified in the Scheme** itself.
>
> That the claim of Central Samman pension can be considered by the Central Government only when these are duly verified and recommended by the State Government/Union Territory Administrations concerned in accordance with the provisions of the Scheme. As per the Scheme, the verification and recommendation report of the State Government is mandatory in view of the fact that the evidence of the claims are in the possession of the State Governments/Union Territory Administrations concerned and not of the Central Government. However, it is also to mention that the Central Government has to keep all documents/reports/evidence in view and to take a decision strictly in accordance with the eligibility criteria and evidentiary requirements of the Central Scheme. A positive recommendation of the State Government is, therefore, not binding on the Central Government (if the claim does not satisfy the eligibility criteria and evidentiary requirements prescribed in the Central Scheme).
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> That the claims of the persons who applied for pension pertaining to border camps suffering in Hyderabad Liberation Movement were not accepted initially, as they did not fulfill the eligibility criteria under the Swatantrata Sainik Samman Pension Scheme. The Central Government constituted a Special Screening Committee in

1983 under the Chairmanship of Shri Govind Bhai Shroff to scrutinize applications of persons who claimed sufferings in the border camps during the Hyderabad Liberation Movement spanning the present States of Andhra Pradesh, Karnataka and Maharashtra in the erstwhile State of Hyderabad. Sufferings in the border camps for carrying out struggle for merger of Hyderabad State in the Indian Union during 1947-48 for a period of more than six months has been recognized as a suffering eligible for grant of Swatantrata Sainik Samman Pension, with the approval of the Cabinet in 1985.

That the members of the Shri Govind Bhai Shroff Committee had made an extensive tour of the regions comprising the erstwhile state of Hyderabad with regard to various camps from which the armed struggle was waged. It met the concerned officers of the concerned States, prominent workers of the Hyderabad Liberation Movement and other people before preparing the list of the 98 camps (including 41 in Andhra Pradesh, 37 in Maharashtra and 20 in Karnataka) along with the names of the camp - in-charges. Shri shroff remained the Chairman of the Committee up to December 1996. Against an estimated number of about 11000 participants of Hyderabad Liberation Movement, the committee recommended about 7000 cases during its term, to whom pension was sanctioned. In December 1996, the Committee was reconstituted under the Chairmanship of Shri N.Giri Prasad, MP (RS). On his death in April 1997, Shri Ch.Rajeswar Rao, MLA Andhra Pradesh was appointed as Chairman.

At the instance of Shri Ch.Rajeshwara Rao, ex-Chairman and other ex-Members of the Hyderabad Special Screening Committee, another 18 Border Camps were added (in July 2004) to the list of 98 Camps which had been earlier prepared by the Shroff Committee.

That the last Committee headed by Shri Rajeswar Rao scrutinized all the old as well as new cases and recommended about 13500 cases for grant of pension during its term from April,'97 till May'98. After the work of the committee was over, it passed a resolution that all eligible cases had been considered. No consolidated, authentic Committee Report (indicating the persons considered, the persons recommended and the persons

not recommended) was submitted by the Committee.

In view of number of complaints received against the cases recommended by the Committee, it was decided not to sanction any claims simply on the recommendations of the HSSC and to get their genuineness verified from the State Government. These claims were thereafter processed as per uniform internal guidelines. After receipt of State verification reports, about 3500 cases have already been sanctioned.

The substantial requirements in the Internal Guidelines were the Personal Knowledge Certificates of other freedom fighters and Camp-in-charge Certificates, which cannot/were not being counter-checked by Government of India.

This state of affairs was continuing till a list of 197 fresh cases, stated to be HSSC-recommended, was received from Shri Ch.Rajeswara Rao, ex-Chairman of the Hyderabad Special Screening Committee. It was found, after scrutiny of the records that the list was highly questionable and not acceptable. Thereafter, a concerted and continuous exercise was undertaken to make systemic improvements in the whole process of examining HSSC-recommended cases.

It is to submit that an internal investigation in this matter has revealed number of irregularities/illegalities. These are enumerated in succeeding paragraphs.

In large number of cases, which have been processed as Hyderabad Special Screening Committee-recommended cases, Hyderabad Special Screening Committee-slips are not available. In many cases, Hyderabad Special Screening Committee-recommendation slips are blank. In many cases, the Hyderabad Special Screening Committee slips are blank and contain only the name of the claimant. HSSC-recommendation slips complete in all respects have been found in only very, very few cases.

There is a significant mismatch about the number of cases recommended by Hyderabad Special Screening Committee. The general institutional impression was that "about 13,500"cases were recommended by the Hyderabad Special Screening Committee. However, the available 'Agenda Folders' contain about 14,100 names. The available lists (in Ministry of Home Affairs) referred to

State Governments for verification contain about 14,700 names. Government of Andhra Pradesh alone has communicated that around 15070 cases were referred to them. This type of mismatch is wholly undesirable and unacceptable in a matter which involves burden on the public exchequer and *Samman* to genuine freedom fighters.

It may also be stated that the Government of Andhra Pradesh, on receipt of large-scale complaints, had ordered the State's Vigilance and Enforcement Department to conduct detailed enquiries into the claims of freedom fighters in four districts. These vigilance enquiries were ordered (in July and November 2005) on complaints like bogus freedom fighters, under-aged persons, bogus date of birth certificates, false certificates in support of claims, etc.

It was decided on 02-12-2005 that, pending the final findings in these vigilance enquiries, the final sanction of pension in these four districts [Karimnagar, Khammam, Nalgonda and Warangal] may be kept in abeyance.

As per information received from the Government of Andhra Pradesh, in the enquiry report submitted by Vigilance and Enforcement on 16-6-2006 it has been stated that large scale irregularities have taken place in sanctioning the freedom fighters pension to the freedom fighters in these District and some officials have also been held responsible in this regard. The report is under consideration of the Government of Andhra Pradesh.

A signed, specific and serious complaint from an ex-LMB Chairman and Ex-Subimalla Taluka Congress Party President, referred to the State Government by MHA, is under enquiry with the Crime Branch, CID, Government of Andhra Pradesh. Report of the State Government is awaited.

After discovery of the above facts during an internal investigation, it was decided in January, 2006 that no sanction or approval for calling Identification Documents (IDs) may be given in any case (Court orders (after correct examination) excluded), till (and if) a bona fide and correct course of action is approved at the competent level.

It had also come to notice that there were several cases in which contradictory State reports had been

received from the State Government. Cases were initially rejected, based on the negative recommendations of the State Government. The same cases were, however, subsequently sanctioned, based on subsequent positive recommendations of the State Government. These fresh reports made no reference to the fact that the same cases had earlier not been recommended for sanction. The Government of Andhra Pradesh has been requested to clarify as to (a) how the cases, which were initially not recommended for sanction, were subsequently recommended for sanction and (b) why no reference was made to the earlier (negative) State reports in the subsequent (positive) State reports, when the same cases were under reference.

Reply from the State Government is awaited.

In a few instances, where pension had been sanctioned on the basis of State Government's verifications reports, subsequent re-verifications have shown that the claimants were not eligible for pension as they were minors at the time of the movement. One person, on whose certification a case had been (earlier) recommended by the State Government, has, then stated that he has never issued any certificates to the claimant. These instances have cast a serious doubt on the verification of cases at the end of the State Governments.

The cases of underground sufferings, which were not screened and recommended by the said Committee, cannot be treated as Committee recommended cases. These are normal cases of claimed absconsion under the provisions of the Swatantrata Sainik Samman Pension Scheme, 1980.

That the persons who consider themselves eligible for Samman pension under the Scheme and desire the Samman pension, should apply in duplicate on the prescribed application form. The application, duly filled in and supported with required documents as proof of claim of suffering, should be sent to the Chief Secretary of the concerned State Government / Union Territory Administration. A copy of such application should be sent to the Deputy Secretary to the Government of India, FF Division, MHA, New Delhi as an advance copy. However, claims can be processed by the Central Govt. only on receipt of verification & entitlement to pension report from

the state Govt./ U.T. Administration concerned."

10. Specific reply had been given to the averments made in the affidavit filed in support of the writ petition. As far as the averments made in paras 2 to 4 of the affidavit filed in support of the writ petition are concerned, the contentions had been denied. It is stated that there is no record to show that the case of the petitioner had ever been considered and recommended by the Special Screening Committee. The case of the petitioner doesn't appear in the computerized list of cases referred to the State Government for Verification after recommendation by HSSC. Since the case had not been considered and recommended by the Hyderabad Special Screening Committee, it has to be considered to be as a normal case of underground suffering. Accordingly, the case of the petitioner had been examined in accordance with the provisions of Swatantrata Sainik Samman Pension Scheme and was rejected vide a detailed speaking order dated 18.08.2006. It is submitted that a positive recommendation from the State Government cannot substitute the evidence prescribed under the Scheme. Further the contentions in para 5 had been denied. It is further stated that there is no record to show that the case of the petitioner had ever been considered and recommended by the Special Screening Committee. The case of the petitioner doesn't appear in the computerized list of cases referred to the State Government for Verification. The case was never referred to State Government for Verification as a case recommended by the Hyderabad Special Screening Committee. The contentions in para 6 also had been denied in the light of

the background of the case. It is stated that the case of the petitioner was examined in accordance with the normal provisions of the Swatantrata Sainik Samman Pension Scheme as the case had not been in the category of the cases recommended by the Hyderabad Special Screening Committee. The case was never referred to State Government for Verification as a case recommended by the Hyderabad Special Screening Committee. The claim was rightly rejected as the requirements of the Scheme had not been fulfilled.

11. The averments made in the para 7 of the affidavit filed in support of the writ petition had been denied. It is stated that there is no record to show that the case of the petitioner had ever been considered and recommended by the Special Screening Committee. The case of the petitioner doesn't appear in the computerized list of cases referred to the State Government for Verification. The case was never referred to State Government for Verification as a case recommended by the Hyderabad Special Screening Committee. In such circumstances, the dismissal of the writ petition is prayed for.

12. The salient features of Swatantrata Sainik Samman Pension Scheme, 1980, had been placed before this Court.

13. The proceedings dated 18-08-2006 reads as hereunder:

"BY REGISTERED POST

No.52/CC/56/2005-FF(HC)
Government of India/Bharat Sarkar
Ministry of Home Affairs/Grih Mantralaya
*****

Lok Nayak Bhavan, Khan Market,
New Delhi – 110003.
Dated : 18th August, 2006.

To

Smt.Dandela Seethamma,
W/o late Rangaiah,
H.No.1-8-80, Jubileepura,
Khammam District,
Andhra Pradesh.

Subject: Compliance of the order dated 12-12-2005 passed by the Hon'ble High Court of Andhra Pradesh at Hyderabad in Writ Petition No. 26390 of 2005 filed by Smt. Dandela Seethamma-regarding.

Madam,

1. I am directed to refer to Government of Andhra Pradesh's letter No.1771/REV/FF-I/2005(162)-1 dated 07-03-2005 on the subject mentioned above and to state that judgment dated 12-12-2005 in Writ Petition No.26390 of 2005, by the Hon'ble High Court of Andhra Pradesh has, *inter alia*, directed as follows:-

"…the Ist respondent is directed to consider the case of the petitioner, pursuant to the recommendations received from the 2nd respondent, and pass appropriate orders, in accordance with law, within a period of 6 (six) weeks from the date of receipt of a copy of this order."

2. Your claim has been examined as per the directions of the Hon'ble High Court, keeping in view the report of the State Government, documents submitted by you, the Government's policy apropos Hyderabad Special Screening Committee (HSSC) recommended cases and in terms of the applicable provisions of the *Swatantrata Sainik Samman* (S.S.S.) Pension Scheme, 1980.

3. The Government had constituted a Special Screening Committee to scrutinize and recommend cases of border camp sufferings during the Hyderabad Liberation Movement. The cases of underground suffering, which were not recommended by the said Committee, cannot be treated as Committee-recommended cases. These are normal cases of claimed absconsion under the normal provisions of the *Swatantrata Sainik Samman* Pension

Scheme, 1980.

4. As per the provisions of the S.S.S. Pension Scheme, 1980, a person who on account of his participation in freedom struggle remained underground for six months or more is eligible for pension, provided he was:

(i) A proclaimed offender; or

(ii) One on whom an award for arrest or head was announced; or

(iii) One for whose detention, order was issued but not served.

Voluntary underground suffering or self-exile suffering for party work under the command of the party leaders are not covered as eligible suffering for pension under the Scheme.

The claim of underground suffering is considered subject to furnishing of the following evidence:-

(i) **Primary Evidence:** Documentary evidence by way of Court's/Government's orders proclaiming the applicant as an absconder, announcing an award on his head or for his arrest or ordering his detention.

(ii) **Secondary Evidence:** Where records of the relevant period are not available, a Non-availability of Records Certificate (NARC) from the concerned State/Union Territory Administration along with a Personal Knowledge Certificate (PKC) from a prominent freedom fighter who has proven jail suffering of a minimum two years and who happened to be from the same administrative unit.

(iii) The NARC should not be general or vague, but should conform to the instructions issued by the Government of India, Ministry of Home Affairs. The instructions, *inter alia,* require the State Governments to issue an NARC only after due verification from all the sources. The NARC is treated as valid only when it is furnished by the State Government in the following manner:

"All concerned authorities of the State Government who could have relevant records in respect of the claim of the applicant, have been consulted and it is confirmed that the official records of the relevant time are not available."

The claim for Central *Samman* can be considered by the Central Government only when these are duly verified and recommended by the State Governments/Union Territory Administrations concerned in accordance with the provisions of the Scheme. As per the Scheme, the

verification and recommendation report of the State Government is mandatory in view of the fact that the evidence of the claims are in the possession of the State Governments/Union Territory administrations and not of the Central Government. However, it is also to mention that the Central Government has to keep all documents/reports/evidence in view and to take a decision strictly in accordance with the eligibility criteria and evidentiary requirements of the Central scheme. A positive recommendation of the State Government is, therefore, not binding on the Central Government (if the claim does not satisfy the eligibility criteria and evidentiary requirements prescribed in the Central Scheme).

5. On examination of your claim, it is found that you are not eligible for grant of Central *Samman* pension due to the following discrepancies/shortcomings:-

(i) You have not furnished acceptable record-based primary evidence, duly verified by the State Government, in support of your claimed suffering (as indicated in para 4 above).

(ii) You have not furnished a valid Not-Availability of Records Certificate (NARC) from the State Government (i.e., the competent authority) containing all ingredients prescribed therefor (as indicated in para 4 above).

(iii) In the absence of a valid 'NARC', secondary evidence, i.e., the Personal Knowledge Certificate (PKC) cannot be considered. The PKC submitted by you from Shri Palivela Rama Krishnarao has, however, been scrutinized. The same is not acceptable as the certifier has not furnished any record/evidence of his two years' jail suffering (i.e., he has furnished no evidence to establish that he is an eligible certifier).

(iv) The Camp-in-charge certificate submitted by you from Shri Ravela Janakiramaiah cannot be considered. The same is not acceptable as it is considered only in the erstwhile Hyderabad Special Screening Committee-recommended cases. As your claim was not recommended by the erstwhile Hyderabad Special Screening Committee, the Camp-in-charge certificate is not relevant or acceptable.

6. Your claim that your case was recommended by the Hyderabad Special Screening Committee, has also been examined in the light of the Government's policy regarding HSSC-recommended cases and the following

discrepancies/shortcomings have been noticed:-

(i) You have claimed that your case was considered by the HSSC. However, it is to point out that consideration does not *ipso facto* imply recommendation. The requisite and mandatory HSSC-recommendation slip, signed by the Chairman and the members of the HSSC, is not available on records in your case. In the absence of a valid recommendation slip of the HSSC, it cannot be presumed that your case was duly recommended by the HSSC. There is also no other document on record to fully & duly establish that your case was recommended by the HSSC. Therefore, your case cannot be taken to be an HSSC recommended case.

7. In view of the above, your claim does not meet the eligibility criteria and evidentiary requirements of the *Swatantrata Sainik Samman* Pension Scheme, 1980.

8. It is therefore regretted that your claim cannot be accepted for grant of Central *Samman* Pension under the *Swatantrata Sainik Samman* Pension Scheme, 1980. Hence the same is, hereby, rejected.

9. This issues with the approval of the competent authority.

Yours faithfully,

(S.D.Kaushik)
Under Secretary to the Government of India."

14. In **Union of India v. M.S.Mohammed Rawther**[1] the Apex Court at paras 5, 6 and 7 observed as hereunder:-

"The Division Bench was hearing an appeal against the order passed by the learned Single Judge whereby the learned Single Judge had give a direction to the Union of India to consider and pass an appropriate order on the petitioners application for grant of SSS Pension to the writ petitioner. The learned Single Judge quashed Exh.P-6 and Exh.P-8 (the orders passed by the Union of India rejecting the petitioners prayer for pension) and remitted the matter back to the Union of India to consider the matter afresh after

providing a necessary opportunity to the respondent for considering his prayer for grant of the SSS pension. Aggrieved by this order, the matter was taken up by the appellant before the Division Bench on which the Division Bench passed the impugned order. Hence the present appeal by the Union of India.

We have heard learned counsel for the parties and perused the record. We are of the opinion that the course adopted by the learned Single Judge was the correct course and the matter should have been remitted back to the Union of India to decide the question of grant of freedom fighter's pension afresh. It required necessary investigation of facts as to whether the incumbent was entitled to SSS pension or not. The courts cannot encroach into the executive or legislative domain, and cannot assume the role of investigation of facts. It is the duty of the State and the Union of India to have considered all the material on the subject and consider whether it is a case worth granting pension as per the SSS pension Scheme, 1980. The Court has only judicial power to review that executive order on Wednesbury principles, but it cannot arrogate to itself the power of the executive. If the order passed by the Union of India is not justifiable on Wednesbury principles the court can only set it aside and remit the matter back to the executive for a fresh decision, but the court cannot assume the power of the Union of India. The court must exercise judicial restraint in such matters. There is broad separation of powers under the Constitution, and one organ of the State should not ordinarily encroach into the domain of another. Montesquieu's theory broadly applies in India too.

Accordingly, we set aside the order of the Division Bench and remit the matter back to the Union of India. The Union of India shall consider and pass an appropriate order in accordance with law preferably within a period of six months from today."

15. In the light of the averments made in the affidavit filed in support of the writ petition and also the stand taken in the counter-affidavit and further taking into consideration the nature of order made by the first

respondent which had been impugned in the present writ petition, this Court is of the considered opinion that the matter requires reconsideration. Hence, the impugned order is hereby set aside and the same is remitted to the first respondent to reconsider the whole issue in accordance with law within a period of eight weeks from the date of receipt of this order.

16. With the above directions, the writ petition is disposed of. No order as to costs.

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Justice P.S.Narayana

12th December, 2007
skmr

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.19424 of 2006

Dated: 12th December, 2007

BETWEEN:

Smt.Dandela Seethamma,
W/o late Rangaiah,
Aged about 77 years,
R/o H.No.1-8-80,
Jubileepura, Khammam District

.. Petitioner

And

The Deputy Secretary,
Freedom Fighters Division,
Ministry of Home Affairs,
Loknayak Bhavan, New Delhi and others
.. Respondents

[1] AIR 2007 SC 3014